

has provided such a severability clause as contained in the foregoing statute.

Pennington v. Stewart (1937), 212 Ind. 553, 563;

Tucker, Secretary of State v. Muesing (1942), 219 Ind. 527.

In answer to your second question I am therefore of the opinion the foregoing statute should be construed valid as written except the restriction as to certain townships by classification should be ignored so that the benefits of said Act would be equally available to any township in the State.

OFFICIAL OPINION NO. 41

April 26, 1946.

Hon. Ross Teckemeyer,
Executive Secretary,
Public Employes' Retirement Fund,
307 Board of Trade Building,
Indianapolis 4, Indiana.

Dear Sir:

I have your letter of April 16, 1946 in which you make the following inquiry:

"In your official opinion, would an employe who has been employed by a State department more than fifteen years be required to retire July 1, 1946, if he was more than seventy years of age, or could he continue until July 1, 1947?"

Section 9 of Chapter 340, page 1589 of the Acts of 1945 provides in part as follows:

"On July 1 of the year next following the effective date as herein defined, any member who shall have attained the age of seventy years, and who shall have completed at least fifteen years of service, shall be compulsorily retired, and shall be entitled to the normal retirement benefit herein provided. * * *"

“Effective date” is defined in Section 4 of the same Act as follows:

“‘Effective Date’ in the case of a department shall mean January 1, 1946 or in the case of a municipality shall mean the date on which the municipality becomes a participant in the Fund.”

Your inquiry requires a construction of the first phrase of Section 9 as follows:

“On July 1 of the year next following the effective date as herein defined * * *.”

It seems to me that the determination will hinge upon the definition imported to the words “next”, “following”, and “date”.

“Next” is defined by Webster’s New International Dictionary as: “nearest; having nothing similar intervening; as: (1) adjoining in a series; immediately preceding or following in order. * * *.”

“Following” is defined in the same dictionary as: “next after; succeeding; ensuing, * * *.”

An analysis of cases which contained definitions of the word “next” in connection with the use of dates, indicates that the court in most instances will attempt to resolve that definition consistently with other factors, and there is no uniform rule to be derived.

For instance, in *Weeks v. Weeks* (1847), 40 N. C. 111, a statute provided that the rule of construction in the Act shall not extend to any deed or will executed before the 15th day of January next. It was there said that the adjective “next” modified “January” and not “day”. But a rule contrary to this grammatical construction has been enunciated in other cases such as *Tompkins v. Corwin* (1828), 9 Cowen (N.Y.) 255. There it was said that the award on a bond was to be made on or before the 18th of January next ensuing the date of the bond. The court said at page 258:

“* * * We have repeatedly held, in similar cases, that the words ‘next’ or ‘then next’ may be considered as referring to the day of the month and not the month itself. * * *.”

In cases defining "date", the courts have similarly attempted to arrive at a just decision based upon all factors involved. For instance, in *Neal v. Reams* (1892), 14 S. E. 617 (Ga.), in a syllabus written by the court, it appears that the note was dated March 4, 1885 promising to pay "on the 5th day of March after date." The syllabus states that the note was ambiguous and since there was no evidence to explain the ambiguity, the court did not err in construing the due date as March 5, 1886 since a date includes the month and the year as well as the day.

It thus appears that there is no set definition which is applicable to these words, which will provide a solution, and since the purpose of any interpretation is to arrive at the legislative intent as nearly as possible, resort must be had to other rules of statutory construction.

A reference to other provisions of the Act is of doubtful assistance. The Act was approved March 9, 1945, and Section 3 thereof provides that the Fund shall be established as of July 1, 1945, shall become operative as of January 1, 1946, but that "No retirement benefit under the provisions hereof shall begin prior to July 1, 1946."

There is no indication that compulsory retirement should begin on the date at which voluntary benefits are available.

A well-known rule of statutory construction is that every word and phrase must be given effect, if possible, in its plain ordinary meaning. As stated in *Porter v. State ex rel.*, (1935), 208 Ind. 410:

"It is a rule of statutory construction that in seeking the intent of an Act, effect must be given to every word and clause therein, if it is possible to do so. Words must be given their plain, ordinary, and usual meaning, unless a contrary purpose is clearly manifested.
* * *"

If the Legislature had intended that compulsory retirement should begin on July 1, 1946, the words "On July 1 following the effective date as herein defined" should have been ample to accomplish that purpose. Instead, the additional words "of the year next" were included. We are not justified in treating those words as mere surplusage in the absence of a compelling

legislative intent which would require such treatment. And it seems to me it makes little difference whether "next" is treated as an adjective modifying "year" or an adverb modifying "following."

If it is an adjective modifying "year", the sentence may be rephrased as follows:

"On July 1 of the next year following January 1, 1946 etc.,"

Giving the day, the month and the year equal importance in the date, it must have been intended that July 1, 1947 was the date of compulsory retirement.

If "next" is an adverb modifying "following", and the day, month, and year of the date are given equal importance, the same result is reached. Any other interpretation substitutes the word "same" for the word "next" which is not justified under an ordinary definition of the word "next".

I am therefore of the opinion that an employe who has been employed by a State department for more than fifteen years and has attained the age of seventy years, may continue until July 1, 1947.

OFFICIAL OPINION NO. 42

April 30, 1946.

Hon. Burrell E. Diefendorf, Chairman,
Indiana Alcoholic Beverage Commission,
Illinois Building,
Indianapolis 9, Indiana.

Dear Sir:

I am in receipt of your letter of April 25, 1946 asking my official opinion in answer to the following question:

"May the appropriation for the administration of the Alcoholic Beverage Commission and the enforcement of the Alcoholic Beverage Act be augmented and increased with the approval of the Budget Committee,